

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI MAKARAND VASANT MAHADEOKAR,  
ACCOUNTANT MEMBER**

**ITA No.2560/Mum/2025  
(Assessment Year :2016-17)**

Aakash Value Realty Private Limited 185-A, Grahmfirth Steel Compound, Jay Choach Signal, Western Express High Way, Goregaon (E) Mumbai-400 063	Vs.	DCIT CC-1(2), Mumbai
<b>PAN/GIR No.AAFCA7223H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms.Ridhisha Jain (virtually appeared)
Revenue by	Shri Surendra Mohan, Sr.DR
<b>Date of Hearing</b>	<b>19/01/2026</b>
<b>Date of Pronouncement</b>	<b>22/01/2026</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against the order dated 15 February 2025 passed by the learned Commissioner of Income-tax (Appeals)-47, Mumbai, arising out

of reassessment framed under section 147 of the Income-tax Act, 1961 for the assessment year 2016–17.

2. In the grounds of appeal, the assessee has challenged both the validity of notice issued under section 148 and, on merits, the disallowance of deduction amounting to ₹1,79,37,500/- claimed under section 35(1)(ii) of the Act in respect of donation of ₹1,02,50,000/- made to Vivekananda Yoga Anusandhana Samsthana (VYASA).

3. The brief facts, as culled out from the impugned assessment order, are that the assessee, a private limited company engaged in the business of builders and property developers and following the percentage completion method, filed its original return of income on 17 October 2016 declaring total income of ₹33,45,59,140/-. The assessee's case was reopened after recording reasons to believe that income chargeable to tax had escaped assessment.

4. The recorded reasons stated that during the assessment proceedings for assessment year 2016–17 in the case of VYASA, it was claimed that one of its employees had opened and operated a bank account in Axis Bank, Hyderabad, by misusing his position as an employee and authorized signatory, and had received donations in the name of the trust while issuing receipts certifying eligibility under section 35(1)(ii). It was further stated that the funds so received were diverted and allegedly repaid to donors through other means without the knowledge of the trust, and that the trust itself had denied any connection

with the said bank account. It was also stated that complaints had been lodged by the trust against the said employee before the Superintendent of Police, Bengaluru and the Directorate of Income-tax (Investigation), Bengaluru. In this backdrop, it was alleged that the assessee, being one of the donors who had paid ₹1,00,00,000/- through the said account, had wrongly claimed deduction under section 35(1)(ii).

5. Notice under section 148 dated 30 March 2021 was issued and served. The assessee filed return in response declaring the same income. Notices under sections 143(2) and 142(1) were issued. The Assessing Officer recorded that the reopening was premised on specific information from ACIT (Exemptions), Coimbatore, and that during assessment proceedings in the case of VYASA, the receipts through the disputed Axis Bank account had been treated as income and brought to tax, as the trust's explanation had not been accepted owing to want of finality of investigation into the FIR.

6. The Assessing Officer further recorded that the assessee had claimed total deduction of ₹1,79,37,500/- under section 35(1)(ii), which included donation of ₹1,00,00,000/- dated 31 March 2016 and ₹2,50,000/- dated 18 November 2015 to VYASA. The assessee submitted that VYASA is a reputed institution in the field of yoga and scientific research, operating offices in Bengaluru, Hyderabad and Mumbai, functioning under the leadership of Padma Shri Dr. H.R. Nagendra, and visited by several dignitaries including the Prime Minister and the

President of India. It was stated that the trust is registered under section 12A and duly approved under section 35(1)(ii), and that the assessee had made donations bona fide for scientific research purposes.

7. The assessee furnished donation receipts, exemption certificates, Gazette notifications granting approval under section 35(1)(ii), PAN of the trust and supporting documents. It was contended that the assessee had no control over utilization of funds by the trust and that alleged misconduct of an employee of the trust could not invalidate its claim when the assessee had acted in good faith. It was also contended that the donations were genuinely made for scientific research and that past additions in earlier years could not ipso facto justify disallowance in the present year.

8. The Assessing Officer rejected the assessee's explanation. He held that for claiming deduction under section 35(1)(ii), the assessee was required not merely to establish payment to an approved institution but also to demonstrate that the payment was in fact utilized for scientific research. He observed that information from ACIT (Exemptions), Coimbatore was categorical to the effect that donations received through the disputed Axis Bank account were not genuinely received by the trust and that receipts issued by the errant employee were not valid. He further observed that the assessee failed to establish where such substantial donations were utilized and failed to demonstrate nexus between donation and actual research activities.

Accordingly, the entire deduction of ₹1,79,37,500/- was disallowed and penalty proceedings under section 271(1)(c) were initiated.

9. The learned CIT(A) affirmed the disallowance. He recorded that one of the employees of VYASA had opened and operated a new bank account in Axis Bank, Hyderabad, through which donations were received and diverted for personal benefit without the knowledge of the trust. He noted that the trust itself had denied having issued valid receipts in respect of donations received in that account and had lodged complaints against the employee for fraud.

10. The learned CIT(A) observed that the assessee is a real estate company operating in Mumbai whereas the trust is based in Bengaluru, yet the donation was made to a newly opened bank account in Hyderabad; that the bank account was not the regular account of the trust; that the trust had confirmed that the said account did not pertain to it; that the assessee had not made donations to any other institution; that the assessee had failed to explain how and why such a large donation exceeding ₹1 crore was routed through a newly opened account rather than established channels; and that the assessee had failed to demonstrate due diligence.

11. The learned CIT(A) concluded that the donation was not received in the bank account of the legitimate donee and that the onus lay on the assessee to establish authenticity and utilization, which it failed to discharge. He relied upon the ITAT

Kolkata decision dated 7 March 2023 in a batch of appeals involving similar donations and reiterated the principle that fraud vitiates all. Accordingly, he upheld the disallowance of ₹1,79,37,500/-.

12. We have heard both the parties at considerable length and have carefully perused the entire material placed on record, including the detailed observations of the Assessing Officer and the learned CIT(A), the documentary evidence furnished by the assessee, and the factual narration emerging from the recorded reasons and assessment proceedings. The controversy before us, though couched in the language of fraud, impropriety, and alleged misuse of statutory benefit, in substance resolves into a far more foundational judicial inquiry, namely, whether the Revenue has discharged its burden of establishing, by cogent and tangible material, that the assessee's donation was not a genuine payment to a duly approved institution under section 35(1)(ii), or that the assessee was in any manner complicit in, or a beneficiary of, any alleged fraudulent arrangement at the level of the donee trust. The answer to this inquiry must necessarily be tested not on conjecture or inference, but on the hard anvil of evidentiary material actually brought on record.

13. At the very threshold, it must be emphasized that the entire edifice of the disallowance rests upon third-party information received from the office of the ACIT (Exemptions), Coimbatore, alleging that one employee of Vivekananda Yoga Anusandhana Samsthana (VYASA) had misused his position as an authorized

signatory, opened and operated a bank account in Axis Bank, Hyderabad, and received donations therein while issuing receipts certifying eligibility under section 35(1)(ii), and that such funds were allegedly diverted and repaid to donors without the knowledge of the trust. The Assessing Officer and the learned CIT(A) have both proceeded on the premise that the said employee misconduct ipso facto taints every donation purportedly routed through that account, including the donation made by the assessee. However, beyond this generalized allegation, no material whatsoever has been brought on record to establish any factual nexus between the assessee and the said employee. There is no statement of the said employee implicating the assessee. There is no diary, no seized record, no incriminating document, and no contemporaneous material found from the possession or control of the said employee suggesting that he had provided any accommodation entry to the assessee company, or that he had received any cheque or RTGS from the assessee for deposit into the disputed account, or that he had thereafter returned any cash to the assessee. The Revenue's case, therefore, begins and ends with a third-party allegation, uncorroborated by any direct evidence linking the assessee to any wrongdoing.

14. It is an admitted and undisputed position that the assessee made the donation through banking channels and that the donation amount stood debited from its bank account. It is equally undisputed that the assessee was in possession of contemporaneous donation receipts and exemption certificates

issued by VYASA, which, at the relevant time, stood duly approved under section 35(1)(ii) of the Act. These foundational facts, which constitute the statutory bedrock of a valid claim under section 35(1)(ii), have not been controverted by any direct or cogent evidence brought on record by the Revenue. The Assessing Officer has not disputed the debit from the assessee's bank account. The Assessing Officer has not recorded any finding that the receipts furnished by the assessee were fabricated or forged. The approvals granted to VYASA under section 35(1)(ii) were in force at the relevant time and have not been shown to have been withdrawn or cancelled with retrospective effect. These undisputed factual anchors cannot be wished away merely on the strength of an unsubstantiated suspicion arising from internal irregularities at the level of the trust.

15. What is conspicuously absent from both the assessment order and the appellate order is any concrete finding that the specific donation made by the assessee was, in fact, credited into the disputed Axis Bank account at Hyderabad, as opposed to being credited into any of the regular and legitimate bank accounts of the trust. There is not even a whisper in either of the impugned orders as to the actual banking destination of the assessee's remittance. More significantly, no bank statement of the trust has been brought on record to show that the assessee's donation amount was ever credited into any account, much less into the disputed account, and thereafter withdrawn in cash to be dispersed back to the assessee. There is no cash-withdrawal

trail. There is no ledger entry. There is no banking correlation. This omission is not a peripheral lacuna; it strikes at the very root of the Revenue's case. Without establishing that the assessee's funds were routed through the allegedly tainted account and thereafter withdrawn in cash, the allegation that the assessee's donation is ingenuine remains a hypothesis devoid of factual anchor.

16. Equally significant is the complete absence of any material to demonstrate that the assessee was aware of, or participated in, any internal misconduct at the level of the trust. The allegation that funds received through the disputed account were diverted and repaid to donors remains a sweeping generality. No evidence has been brought on record to show that any amount was repaid to this assessee. No bank statement of the assessee evidences any inflow corresponding to any alleged refund of donation. No cash seizure, no incriminating ledger, no corroborative trail has been unearthed. The Department has not even brought on record any inquiry conducted from the trust itself or from its bankers to verify whether the assessee had, in fact, not paid any such donation and whether the amount was merely camouflaged through some different bank account and thereafter returned in cash. These trails and linkages are not peripheral formalities; they are the very sinews of proof in a case alleging fraud. In the absence of such material, it is judicially impermissible to draw an adverse inference against the assessee.

17. The Revenue's case thus rests not on proof, but on suspicion. The Assessing Officer, without conducting any independent inquiry, without calling for the bank statements of the trust, without examining whether the assessee's remittance ever entered the disputed account, without verifying whether any cash was withdrawn and dispersed, and without recording any statement of the employee implicating the assessee, has simply proceeded to make the addition on the basis of half-baked information received from a third party. Such an approach, with respect, reflects not an exercise of adjudicatory judgment, but an abdication of investigative responsibility. Additions under the Income-tax Act cannot be founded on conjecture or untested information. They must rest on verified facts and demonstrable nexus. In the absence of such inquiry and such nexus, the impugned disallowance is rendered legally infirm.

18. The Assessing Officer's premise that the assessee must demonstrate actual utilization of the donation for scientific research betrays a fundamental misapprehension of the statutory architecture of section 35(1)(ii). The legislative scheme is unambiguous: the donor is required to establish payment to an institution approved at the relevant time. The statute does not impose upon the donor an obligation to audit, monitor, or prove the end-use of funds by the donee, for to judicially engraft such an onerous burden would be to render the statutory incentive illusory and unworkable. Once payment to a duly approved institution is demonstrated through contemporaneous documentary evidence, the statutory conditions stand fulfilled.

Any subsequent misconduct, misappropriation, or internal irregularity at the level of the donee institution cannot retroactively invalidate the assessee's claim, unless it is shown, by cogent material, that the assessee was complicit therein or that the transaction was a sham from its inception. In the present case, there is no such material. The reliance placed by the learned CIT(A) on the ITAT Kolkata decision is wholly misplaced, for in that case there were detailed findings of organized fraud, round-tripping of funds, and conscious participation by the assessees, whereas no such findings exist here; judicial precedents are not mechanical templates to be transplanted irrespective of factual dissimilarities, but principles to be applied in harmony with the factual matrix at hand.

19. The oft-invoked maxim that "fraud vitiates all", though undoubtedly a salutary principle, cannot be elevated into an evidentiary substitute. Fraud must be pleaded with specificity and proved with particularity. In the present case, fraud, if any, is alleged against an employee of the trust, and there is not a shred of material to establish fraud on the part of the assessee or to demonstrate that the assessee's transaction was anything other than a bona fide donation to a duly approved institution. The learned CIT(A)'s observations regarding geographical incongruity, routing through a newly opened account, and lack of due diligence are inferential and speculative, and none of these factors, either singly or cumulatively, displace the concrete documentary evidence produced by the assessee. It is also of considerable significance that the trust has not denied receipt of

donation from the assessee; what has been alleged is denial of ownership of one particular bank account, and in the absence of any finding that the assessee's donation was routed through that account, the disallowance lacks factual foundation. A donor cannot be penalized on the basis of internal irregularities of the donee institution, absent proof of nexus, complicity, or benefit.

20. Viewed thus, the impugned disallowance rests on surmise, presumption, and third-party allegations, unbacked by any direct or credible evidence linking the assessee to any alleged fraudulent activity. The statutory conditions of section 35(1)(ii) stand fulfilled. The assessee has discharged its burden. The Revenue has failed to rebut the same by any cogent or tangible material.

21. Accordingly, in our considered opinion, the disallowance of ₹1,79,37,500/- made by the Assessing Officer and sustained by the learned CIT(A) is unsustainable both in law and on facts and is hereby deleted.

**22. In the result, the appeal of the assessee is allowed.**

Order pronounced on 22<sup>nd</sup> January, 2026.

**Sd/-**  
**(MAKARAND VASANT**  
**MAHADEOKAR)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 22/01/2026  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**